

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

IN RE MUTUAL FUNDS INVESTMENT	:	MDL 1586
LITIGATION	:	
	:	
In re Excelsior, Federated, Scudder and	:	Case No. 04-MD-15861
AMCAP	:	
	:	
[Federated Sub-Track]	:	Nos. 04-928; 04-933
	:	...o0o...

**MEMORANDUM**

This will address the motions to dismiss (omnibus and supplemental) pending in the Federated sub-track. The motions are addressed to the Consolidated Amended Class Action Complaint in 04-928 filed September 29, 2004 and amended by interlineation February 14, 2005 (docket entries no. 181 and 394 in 04-md-15861) and the Corrected Amended Fund Derivative Complaint in 04-933 filed September 29, 2004 and corrected February 11, 2005 (docket entries no. 180 and 384 in 04-md-15861).

Named as defendants in the class action complaint are the “Federated Fund Group Defendants,” including the parent, the advisors, an administrator, and a distributor; eight registrants/issuers; the director/trustees; and several Federated employees.<sup>1</sup> Named as defendants in the fund derivative complaint are the Federated companies; the director/trustees; and (as nominal defendants) the entire family of Federated mutual funds. Various broker-dealers and traders also are named in the complaints.

Having independently reviewed the Investor Class Opinion and the Fund Derivative Opinion issued by Judge Motz on August 25, 2005 in No. 04-md-15863, I agree with his reasoning. Accordingly, for the reasons stated in those opinions, the following rulings are made.

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<sup>1</sup> The individual defendants Hauf, Nixon, and Pillion have been dismissed.

**Class Complaint**

**Section 11, Section 12, and Section 15 Claims - 1933 Act**

The motion filed by the Federated Fund Group Defendants is **Granted** and Counts I, II, and III are **Dismissed**.

**Section 10(b), Rule 10b-5, and Section 20 Claims - 1934 Act**

The motion filed by the Federated Fund Group Defendants as to Counts IV, V, and VI is **Denied**, except that a ruling is **Deferred** as to the “outside” director/trustee defendants.

The motions filed by the “broker-dealer” defendants as to Counts IV and V are **Denied** as to the Bank of America Defendants and STC, but **Granted** as to the Lehman Defendants.<sup>2</sup>

The motions filed by the “trader” defendants as to Counts IV and V are **Stayed** as to Canary and Stern, and **Denied** as to Veras.

**Section 34(b) and 36(a) Claims - Investment Company Act**

The motion filed by the Federated Fund Group Defendants is **Granted** and Counts VII and VIII are **Dismissed**.

**Section 36(b) Claim - Investment Company Act**

The motion filed by the Federated Fund Group Defendants is **Denied without prejudice** as to Count IX subject to later determination whether the 36(b) claim may be brought in the class action or only in the fund derivative action, and subject to later determination as to the “outside” director/trustees.

The motions filed by Veras and the Lehman Defendants as to Counts IX (and X) are

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<sup>2</sup> Lehman, Basu, and Kirsch are alleged to have negotiated, facilitated, and financed market timing on behalf of Canary but not to have directly engaged in trading for their own benefit. (Cons. Amd. Class Action Cplt. ¶¶ 49-51, 88, 92-93).

**Granted.**

Section 48(a) Claims - Investment Company Act

The motion filed by the Federated Fund Group Defendants is **Granted** to the extent the Section 48(a) claim (Count X) is based on a violation of either Section 34(b) or Section 36(a) and **Denied without prejudice** to the extent it is based on a violation of Section 36(b).

Common Law Claims

The motions filed by all defendants are **Granted** as to all state law claims on the basis of preemption under SLUSA, with leave to amend consistent with the Investor Class Opinion.

**Fund Derivative Complaint**

Section 36(b) Claim - Investment Company Act

The motion filed by the Federated Fund Group Defendants as to Count I is **Denied**.

Section 36(a) and 47(b) Claims - Investment Company Act

The motion filed by the Federated Fund Group Defendants is **Granted** and Counts II and III are **Dismissed**.

Section 206 and 215 Claims - Investment Advisor Act

The motion filed by the Federated Fund Group Defendants is **Granted** and Count IV is **Dismissed**.

Section 48 Claim - Investment Company Act

The motion filed by the Federated Fund Group Defendants is **Denied without prejudice** to the extent the Section 48 claim (Count V) is based on a violation of Section 36(b) and otherwise **Granted**.

State Law Claims

The motions filed by all defendants are **Granted** and all state law claims (Counts VI-XII) are **Dismissed** for failure to make demand as required by applicable state law.

The parties shall submit appropriate Orders implementing these rulings and advising of any non-substantive errors or omissions within 30 days. Any motions for reconsideration (not to be directed to the rulings in the Investor Class Opinion or the Fund Derivative Opinion) also are due within 30 days.

November 3, 2005

Date

/s/

Catherine C. Blake  
United States District Judge